

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 6, 2008**

Members Present:

Michael Gallagher
Liz Victor
Edward Hardemon
George Alejos
Mary Rogers
Andrew Ozuna
Henry Rodriguez
Maria Cruz
Peter Vallone
Mimi Moffat
Rollette Schreckenghost

Staff:

Fernando De Leon, P.E. Assistant Director
Christopher Looney, Planning Manager
Rudy Niño, Senior Planner
Michael Farber, Planner
Jacob Floyd, Planner
Ted Murphree, Asst. City Attorney
David Simpson, Chief Sign Inspector
Andrea Giles, Senior Management Analyst

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Ms. Moffat arrived at 1:05 p.m.

Case No. A-08-104 was withdrawn as per the applicant.

Ms. Schreckenghost arrived at 1:14 p.m.

CASE NO. A-08-085

Applicant – Norma Alvarez
Lots 6 and 7, Block 5, NCB 8650
313 Southwest 29th Street
Zoned: "R-4" Residential Single-Family District

The applicant is requesting for a 2-foot, 2-inch variance from the requirement that predominantly open front yard fences shall not exceed 4 feet in height, in order to keep an existing 6-foot, 2-inch tall front-yard ornamental iron fence.

Michael Farber, Planner, presented background and staff's recommendation of denial on this case. He indicated 35 notices were mailed, none were returned in favor and none were returned in opposition.

Mr. Alvarez, applicant, stated he did not know he had to pull permits and he didn't know the regulations. He also stated the reason for this height was for the safety of his two small children. He further stated people from the neighborhood were jumping over the fence and several houses around the neighborhood have been burglarized.

The following citizens appeared to speak:

Rosalba Camacho, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-085 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal Case No. **A-08-085**, variance application for **Norma Alvarez**, the applicant is requesting a **2-foot, 2-inch variance from the requirement that predominantly open front yard fences shall not exceed 4 feet in height, in order to keep an existing 6-foot, 2-inch tall front-yard ornamental iron fence**, subject property description is **Lots 6 and 7, Block 5, NCB 8650**, located at **313 Southwest 29th Street**, again the applicant is **Norma Alvarez**. I move that the Board of Adjustment grant the applicants request regarding this appeal case **No A-08-085** application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the existing "R-4" Residential Single Family District to remain. The only request is for the 2-foot 2-inch variance in height of the fence that is currently existing.** Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has provided testimony to us today to show that the reason he built the fence was due to vandalism, he built it for sense of security, and that the neighbors had been broken in to a numerous number of times and safety for his family. Additionally the remedy in this case would be a removal of this fence which is already built and a reconstruction which would place an economic hardship on the applicant.** So that the spirit of the ordinance is observed and substantial justice is done in that **again no changes to land use is recommended or is requested.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that ~~again the existing "R-4" Single Family District is to remain and the existing single family residence is to remain and no other changes in land use are being requested.~~ Such variance will not substantially or permanently injure the district in which the variance is sought in that **we have been provided testimony by staff here today that there was no opposition to the variance from the surrounding neighbors that were mailed notices for the fence.** Such variance will not alter the essential character of the districts in which the variance is sought in that **we have been presented testimony that 6-foot fences are prominent through the neighborhood.** Such variance will be in harmony with the spirit and purpose of this chapter **for the same reasons mentioned above.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that

again there are no changes to land use pattern requested. The variance will not adversely affect the public health, safety or welfare of the public **the applicant has pulled a building permit and will build it according to specifications.** The motion seconded by Mr. Vallone.

AYES: Ozuna, Vallone, Rodriguez, Alejos, Rogers, Cruz, Schreckenghost, Victor, Hardemon, Gallagher

NAY: Moffat

THE VARIANCE WAS GRANTED.

CASE NO. A-08-098

Applicant – Grace Tan
Lots 6, 7, and 8, Block 1, NCB 7841
255 West Dickson Avenue
Zoned: “R-6” Residential Single-Family District

The applicant is requesting for a 1-foot variance from the requirement that predominantly open front yard fences shall not exceed 4 feet in height, in order to keep an existing 5-foot tall chain, link front-yard fence.

Michael Farber, Planner, presented background and staff’s recommendation of denial of this variance. He indicated that there were 29 notices mailed, 1 was returned in favor and 2 were returned in opposition and one was returned with no indication.

Grace Tan, applicant, stated the reason for this request is for protection of her property. She also stated there were people who were climbing over the fence. She further stated she came upon a young man who told her he could build the fence for her. She also stated she cannot have her tenants move out because it would a hardship on her especially since the economy is not very good right now.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-098 closed.

MOTION

A motion was made by **Ms. Victor**. Re Appeal No. **A-08-098**, subject property address **255 West Dickson Avenue**, subject property description **Lots 6, 7, and 8, Block 1, NCB 7841**, located at **255 West Dickson Avenue**, applicant **Grace Tan**. I move that the Board of Adjustment grant the applicants request regarding appeal number **A-08-098** for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public

interest in that **it will not change the "R-6" Residential Single Family District.** Due to the special conditions a literal enforcement of the ordinance would result in an unnecessary hardship in that **the fence has already been constructed and would cause financial hardship in that the tenants would move out of the property.** So that the spirit of the ordinance is observed and substantial justice is done in that **no changes in land use would result from granting this motion.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **it is a residential fence and has no other uses.** Such variance will not substantially or permanently injure the district in which that variance is sought in that **is a well constructed fence.** Such variance will not alter the essential character of the districts in which the variance is sought in that **other similar fences exist in the neighborhood.** Such variance will be in harmony with the spirit and purpose of this chapter in that **is an open fence that allows for airflow and light penetration.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **there have a number of break-ins and the tenants and owner fear for their safety.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **it is just for this particular property and will make no changes to other properties in the district.** The variance will not adversely affect the public health, safety or welfare of the public in that **it creates no safety hazards in the area and will provide safety for the tenants.** The motion seconded by Mr. Hardemon.

AYES: Hardemon, Schreckenghost, Alejos, Cruz, Rogers, Rodriguez, Vallone, Ozuna, Gallagher

NAY: Victor, Moffat

THE VARIANCE WAS GRANTED.

CASE NO. A-08-100

Applicant – Paul R Munoz

The South 132 feet of Lot 21, Block 10, NCB 7397

Zoned: "R-6" Residential Single-Family District

The applicant is requesting 1) a 4-foot, 6-inch variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to keep a carport 6 inches from the side property line and 2) a 5-foot variance from the requirement that a minimum 10-foot front setback be maintained in "R-6" zoning districts, in order to keep the same carport 5 feet from the front property line.

Michael Farber, Planner, presented background and staff's recommendation of denial on this case. He indicated 31 notices were mailed, 10 were returned in favor and 1 was returned in opposition and an unofficial response from the Thompson Community Neighborhood Association stating they were in favor.

Paul R Munoz, applicant, stated the reason for this is request is to shelter his wife from the heat due to her being diagnosed with cancer. He also stated he did mention to the contractor that he need to get a permit and the contractor told him he would apply for a permit. He further stated when he asked him for the permit the contractor told him he did not pull one.

The following citizens appeared to speak:

Caroline M. Contreras, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-100 closed.

MOTION

A motion was made by **Mr. Vallone**. Re Appeal No. **A-08-100**, variance application for **Paul R. Munoz**, subject property is located at **119 West Emerson, that is the South 132 feet of Lot 21, Block 10, NCB 7397**, this area is zoned **"R-6" Residential Single-Family**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-100**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **it has been shown that there are other similar carports that have been constructed within the same block as this property**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it provides weather and protection from the exposure to sun of the applicant's wife who is suffering from cancer**. So that the spirit of the ordinance is observed and substantial justice is done in that **the carport would have to be reconstructed in order to be in compliance with the code**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **it will not create any change in residential "R-6" use**. Such variance will not substantially or permanently injure the district in which that variance is sought **due to other carports of similar construction located in the same district**. Such variance will not alter the essential character of the district in which the variance is sought **for the same reason previously noted that other carports of similar construction and size are also in the district**. Such variance will be in harmony with the spirit and purpose of this chapter in that **it is covering the parking portion of residential area**. ~~The plight of the property owner for which the variance is~~ sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the carport is constructed and keeping with the neighborhood**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **there appears to be numerous other carports in the area that have been built**. The variance will not adversely affect the public health, safety or welfare of the public in that **it does not obstruct line of sight and neighborhood streets**. **Mr. Vallone made a motion to withdraw the second variance. The applicant' request is being modified as follows to not include that a 4-foot, 6-inch**

variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to keep the same carport 5 inches from the west side property line. This motion is for the first part of the variance. The motion seconded by Mr. Rodriguez.

AYES: Vallone, Rodriguez, Schreckenghost, Cruz, Rogers, Hardemon, Alejos, Ozuna, Victor, Gallagher

NAY: Moffat

THE 1ST VARIANCE WAS GRANTED.

MR. GALLAGHER REQUESTED FOR A BOARD MEMBER TO MAKE A MOTION ON THE 2ND VARIANCE. NONE OF THE BOARD MEMBERS MADE A MOTION.

THE 2ND VARIANCE WAS NOT GRANTED DUE TO LACK OF MOTION.

Board members took a 10-minute recess.

CASE NO. A-08-101

Applicant – San Antonio Conservation Society
The Southwest Irregular 195 feet of Lot 2 and Pt of A-1, NCB 894
107 King William Street
Zoned: "H HE O-2 S RIO-4" Historic Exceptional Office Historic River Improvement Overlay District-4 with a Specific Use Permit for a Museum

The applicant is requesting for 1) an 8-foot variance from the requirement that a minimum 20-foot side setback be maintained in "O-2" zoning districts when abutting residential uses or zoning districts, in order to erect a structure 12 feet from the side property line and 2) a 4 space parking adjustment from the parking standard that office uses of 8,675 square feet of gross floor area have 29 spaces, in order to allow 25 parking spaces.

The applicant has requested to continue this case until the next regularly scheduled meeting which is October 20, 2008.

Ms. Moffat made a motion to postpone this case until October 20, 2008. Mr. Vallone seconded the motion and all members voted in affirmative.

CASE NO. A-08-103

Applicant – Frances Hernandez
The North 132 feet of Lot 9, Block 13, NCB 7545
122 West Emerson
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a 1) a 4-foot, 3-inch variance from the requirement that a minimum 10-foot front setback be maintained in "R-6" districts, in order to keep an existing carport 5 feet, 9 inches from the front property line, and 2) a 4-foot, 7-inch variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to keep the same carport 5 inches from the west side property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of these variances. He indicated that there were 28 notices mailed, 8 were returned in favor and none were returned in opposition and an unofficial response from the Thompson Community Association stating that they are in favor.

Frances Hernandez, applicant, stated the reason for this variance is for health reasons. Her skin gets irritated when exposed to sunlight because 60% of her body was burned with 2nd and 3rd degrees in a house fire several years ago. She also stated she did not know she was doing anything wrong. She hired a contractor because she saw a sign. She further stated that the contractor called her and told her she needed to pull a permit for the carport because a neighbor reported her.

The following citizen(s) appeared to speak:

Eva Acquart, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-103 closed.

MOTION

A motion was made by **Ms. Rogers**. Variance application for a **4-foot, 7-inch variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to keep an existing carport 5 inches from the west side property line**, subject property description **the North 132 feet of Lot 9, Block 13, NCB 7545 at 122 West Emerson Avenue**, applicant being **Frances Hernandez**. I move that the Board grant the applicant's request regarding this appeal, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **it will adversely affect the character of the area. Being since there is one across the street exactly like it.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this individual has been taken by an unwilling contractor who has promised to have permits and so forth and did not obtain them. Resulting a hardship on this woman and now she is going to have this carport reconstructed.** So that the spirit of the ordinance is observed and substantial justice is done in that **the applicant will comply with what we say here and grant regarding the other part of the variance will get with city staff on what can be done.** Such variance will not authorize the

operation of a use other than uses specifically authorized for the districts in which the property for which the variance is sought is located in that **it is a carport and would be used for that particular purpose to shield the applicant from who has a handicap resulting from burns.** Such variance will not substantially or permanently injure the district in which the variance is sought in that **it will not have a negative impact on the neighborhood and people have come forward saying that they have no objection to it.** Such variance will not alter the essential character of the districts in which the variance is sought in that **for the same reason there is no problem, no objection from the neighborhood of any substantial means.** Such variance will in harmony with the spirit and purpose of this chapter in that **the proposed carport is promoting the welfare of the applicant and the structure has been finished to blend in with the community.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **she contracted in good faith to have this carport constructed and as a result the contractor did not advise her of permits.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the proposed variance will not weaken the overall zoning of the area.** The variance will not adversely affect the public health, safety or welfare of the public in that **it is not really bothering anyone else and the adjacent neighbors are perfectly happy with what is taking place.** The motion seconded by Ms. Schreckenghost.

AYES: Rogers, Rodriguez, Schreckenghost, Hardemon, Cruz, Vallone, Alejos, Victor, Ozuna, Gallagher

NAY: Moffat

THE 2ND VARIANCE WAS GRANTED.

MR. GALLAGHER REQUESTED FOR A BOARD MEMBER TO MAKE A MOTION ON THE 1ST VARIANCE. NONE OF THE BOARD MEMBERS MADE A MOTION.

THE 1ST VARIANCE WAS NOT GRANTED DUE TO LACK OF MOTION.

Mr. Rodriguez departed at 3:23 p.m.

Sign Master Plan No. 08-018

David Simpson, Chief Sign Inspector, briefed Board Members on Sign Master Plan for Cielo Vista, located at Cielo Vista and IH 10 West.

Ms. Rogers made a motion to approve Sign Master Plan No. 08-018 and was seconded by Mr. Hardemon and all members voted in the affirmative.

Consideration of proposed amendments to Chapter 28: Signs and Billboards, Sections 28-6 Definitions and 28-245 Nonconforming Sign Abatement.

David Simpson, Chief Sign Inspector, briefed Board Members on proposed amendments to Chapter 28: Signs and Billboards, Sections 28-6 Definitions and 28-245 Nonconforming Sign Abatement.

Mr. Ozuna made a motion to approve the draft of the Chief Sign Inspector's proposed changes to Chapter 28 of the City Codes as presented to us today by **David Simpson**, Chief Sign Inspector. **Ms. Victor** seconded the motion. All members voted in the affirmative with **Ms. Moffat** voting against.

Approval of the Minutes

Ms. Rogers made a motion to approve September 15, 2008 minutes and **Ms. Moffat** seconded it and all members voted in the affirmative and **Ms. Cruz** abstained.

Staff Report

Rudy Niño, Senior Planner, reminded board members about the Parliamentary Procedures Training to be held on Friday, October 17, 2008 in the Board Room.

There being no further discussion, meeting adjourned at 3:42 p.m.

APPROVED BY: Michael R. Gallagher OR Paul Klein, Vice-Chair
Michael Gallagher, Chairman

DATE: Oct 20, 2008

ATTESTED BY: Christopher J. Looney DATE: 10-22-08
Development Services, Planning Manager